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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-785

CONSUMERS UNION OF UNITED STATES, INC.
Petitioner,

v.

COMMITTEE FOR THE IMPLEMENTATION OF
TEXTILE AGREEMENTS, ET AL.,
Respondents.

BRIEF OF THE AMERICAN IMPORTERS ASSOCIATION, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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By leave of the Court and with the consent of the Government, American Importers Association, Inc., as Amicus Curiae, files this brief in support of the Consumers Union of the United States, Inc.'s petition for writ of certiorari.

I. INTEREST OF THE AMICUS CURIAE, AMERICAN IMPORTERS ASSOCIATION

A. Organization and Purposes of the American Importers Association

The American Importers Association (AIA) is a New York nonprofit membership corporation organized in 1921. It is the only Association of national scope representing American companies engaged in all phases of the import trade. At present, AIA is composed of more than 1200 American firms directly or indirectly involved in the importation of goods produced outside of the United States.

The purpose of AIA is to promote the international commerce of the United States, particularly its import trade, and to encourage the equitable administration of the laws relating to imports. AIA thus has an obligation to speak for the entire importing trade in seeking proper procedures and correcting procedural deficiencies in this and future cases relating to international trade questions.

B. Direct Interest of AIA in this Proceeding

The broad scope of the membership of AIA makes it uniquely qualified to file this brief on behalf of the many United States importers who will be affected by the decision in this case. Further, several hundred AIA members share in the importation of textiles into the United States—a trade which exceeded $6 billion in 1977. AIA is vitally concerned that the Government's consideration and implementation of restrictions affecting the importation of textiles and textile products into the United States

be fair to all interests and proceed in accord with the requirements of procedural due process as specified in the Administrative Procedure Act and that any such restrictions not extend beyond the scope of governing statutory guidelines.

The procedures followed by the Committee for the Implementation of Textile Agreements (CITA) which led to the establishment of the program regulating textile and textile product importation in question in this case provide no assurance that the interests and views of the affected parties--especially those of existing and potential textile importers--have been heard or considered. It is these interests that the petitioner is seeking to protect.

AIA has a particular interest in the resolution of the questions presented by the petitioner. This case affords importers a unique opportunity to press their claim for procedural rights in this field. Further, it is an opportunity to begin to clear away a jurisdictional question which attaches to many international trade issues. It is common knowledge that most importing firms are small and do not have the time, money, or energy to contest effectively a major government program such as this system of agreements, much less to litigate the preliminary jurisdictional questions. On behalf of U. S. importers, AIA has a duty to join in seeking a forum for review of governmental action which is oppressive in this case and potentially so in future actions of the Committee.

II. ISSUE PRESENTED

The Court of Appeals did not reach the merits of petitioner's claims. Rather, the Court decided that the subject matter of this suit was not within the jurisdiction of the District Court because it was exclusively within the province of the Customs Court. The correctness of that ruling is the issue in the petition for writ of certiorari.

III. REASONS FOR GRANTING THE WRIT

A. The Petition for Writ of Certiorari

AIA respectfully refers the Court to the petition for writ of certiorari. AIA agrees with the analyses and conclusions contained therein. It adopts and incorporates them by reference in this memorandum.

B. The Petitioner's Case Is Appropriate for Decision by the District Court

AIA respectfully submits that the case at issue is not one which is within the exclusive province of the Customs Court. That Court cannot be said to have exclusive jurisdiction over every controversy dealing ultimately with the responsibilities of the Customs Service, no matter how remotely related to the importation of goods. The issues involved have nothing to do with Customs matters requiring the expertise of the Customs Court. Rather, the issues are solely concerned with the proper conduct of an administrative proceeding and a finding of disruption in a particular domestic market. These questions are well within the traditional

purview of the District Court.

C. There Is a Conflict Between Circuits on the Jurisdictional Question Presented

The conflict presently existing between the Court of Appeals decision below and the decision of the Court of Appeals for the Second Circuit in Sneaker Circus, Inc. v. Carter, No. 77-6092 (Nov. 10, 1977) is illustrative of the problem. There is no meaningful distinction between the Customs Service's roles in enforcing the different restraint agreements involved in these two cases. The structures of the agreements limit Customs to a statistical recordkeeping role.

The questions presented to the District Court by the petitioner are ones of domestic economics and administrative procedure—hardly ones involving customs law or procedure. The question of whether or not a protestable Customs action arises out of an entry of goods affected by the agreement bears little relationship to the real issues.

Continued litigation of this jurisdictional question benefits no one. In the minds of the lay importers, it only raises a Dickensian specter of protracted legal disputes over issues seemingly unrelated to their claim.

D. Importers May Be Denied a Forum In Which to Raise a Claim

If the erroneous assertion that the Agriculture Act of 1956 is one of the

"customs laws" is left standing, the petitioner's only recourse, and that of other importers similarly situated, will be to press his claim in the Customs Court. Access to that court, however, is preconditioned upon the denial of a protest filed by the importer at Customs. Unfortunately, there are no statutory grounds for an importer to protest the procedure CITA followed in adopting this program of textile restrictions unless the importer can convince his overseas suppliers to violate the laws of their country. Thus, the petitioner, and any other importer, is left without a forum in which to raise his claim.

Importers of textiles have a right to a forum in which they may demand that CITA publicly justify these agreements by demonstrating that the statutory prerequisites were met. Without this forum CITA cannot be held to its statutory responsibility. The result will be unnecessary agreements restricting importer access to United States markets and higher prices to the American consumer.

E. **The Customs Court Could Not Grant the Appropriate Relief**

Even if the petitioner were able to gain access to the Customs Court, he would not be granted the injunctive relief requested. The petitioner, or any importer similarly situated, has no adequate remedy at law and must seek a remedy equitable in nature. The Customs Court however, has repeatedly stated that it does not possess equitable powers. Cummins-Collins Distilleries v.

United States, 20 Cust. Ct. 93, 97, C.D. 1090 (1948), aff'd 36 C.C.P.A. 88, C.A.D. 403 (1949). See also Matsushita Electric Industrial Company, Ltd. v. United States Treasury Department, 67 Cust. Ct. 328, 329-30, C.D. 4292 (1971), aff'd, 60 C.C.P.A. 85, C.A.D. 1086 (1973), cert. denied, 414 U.S. 821 (1973). Without the power to enjoin the application of the agreements, the Customs Court would be unable to compel CITA to repair the deficiencies of its procedures. Thus, denial of jurisdiction by the Court of Appeals effectively, if not actually, leaves the petitioner without any forum for review.

IV. CONCLUSION

The interpretation of the Customs Court's basic jurisdictional grant in the decision below is erroneous and prevents this petitioner today, and other importers in the future from obtaining judicial review of an improper administrative act. Importers will suffer irreparable injury under this interpretation. The vagueness of the jurisdictional boundaries of the Customs and District Courts in this and other cases only tangentially related to Customs Service action—underscored by the conflict between the circuits—creates unnecessary litigation and risks for the international trade community. In view of the considerations stated herein and in the petition, AIA urges that the writ of certiorari should be granted.

Respectfully submitted,

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